IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.210 OF 2002
IN
FIRST APPEAL NO.144 OF 1999

Dr.P.G.Nair,
Adult, Inhabitant of Mumbai,
residing at 86 Dhun villa,
Ground Floor, J.P.Road,
Andheri (W),
Mumbai 400 058. .. Appellant
(Orig.Plff)

Vs

Padmanabhan Mohanan Nair,
Adult, Inhabitant of Mumbai
residing at Sheroo Villa,
(also known as Dhun Villa)
Ground floor, 86 JP Road,
Andhri (W), Mumbai 400 058. .. Respondent.
(Orig.Deft)

Shri A.Y.Sakhare, Senior Advocate i/by Shri V.R.Tripathi, for the appellant.

Shri Y.S. Jahagirdar, Senior Advocate, i/by Shri R.M.Vasudeo, for the respondent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : MARCH 23, 2005.

ORAL JUDGMENT : (PER S.B.MHASE, J.)

1. This Letters Patent Appeal is directed against the judgment of the learned Single Judge dated 30.1.2002 in First appeal No.144 of 1990. This matter arises from S.C.Suit No.1745 of 1993 filed in the City Civil Court, Bombay by the appellant against

the respondent wherein the prayers were made that the respondent be decreed and ordered to quit, vacate and remove himself from the suit premises, viz. 86, Sheroo Villa, also known as Dhun Villa, Ground floor, J.P.Road, Andheri (W), Bombay-58. Possession was claimed on a ground that the respondent is a gratituous licensee residing with the plaintiff since he was permitted to reside with the plaintiff, being the son of the sister of the plaintiff-appellant. Since the licence is terminated, possession was claimed by the appellant. The respondent has opposed the said suit on various grounds contending, inter alia, that he is a tenant in the said premises and denying that he is a gratituous licensee. It was his case that he was paying fees/compensation towards enjoyment of the licence and, therefore, within the provisions of the Rent Act he is a tenant and, therefore, the City Civil Court has no jurisdiction to entertain the suit, thereby the question of tenancy, being a licensee who pays the fees and/or a gratituous licensee, was under consideration and further it was necessary to consider whether as a result of termination of the licence, his possession in the suit premises is an unauthorised possession which can be directed to be vacated by the City Civil Court. On all these issues the City Civil Court has

considered the facts on law and decided in favour of the appellant. As against the said decree passed by the City Civil Court on 28.2.1999 the respondent herein has preferred the First Appeal referred to above. At the time of hearing of the said First Appeal, the appellant-original plaintiff, though served, was absent and, therefore, the learned Single Judge proceeded to hear the appeal and disposed of the appeal holding that the City Civil Court could not have entertained and decreed the suit filed by the present appellant and could not have ordered eviction of the original defendant/present respondent. Thus, holding that the City Civil Court had no jurisdiction to entertain the suit, the Appeal was filed.

2. We have heard both the learned senior counsel appearing for the parties. Mr.Jahagirdar, at the outset, pointed out that the learned Single Judge was under obligation to decide all issues involved in the matter and since all the issues have not been decided, he submitted that it would be appropriate to remit back the matter without expressing any opinion on the issue of jurisdiction at this stage. Mr Jahagirdar further submitted that since the order is an exparte order, his client has no objection to

remit back the matter. Mr Sakhare also submitted that even if the issue is decided in his favour, still the matter will have to be remanded to the learned Single Judge for deciding other issues involved in the matter. Under these circumstances, we find that since the issue of jurisdiction was decided by the learned Single Judge without giving an opportunity of being heard to the appellant, it will be appropriate to set aside the finding recorded by the learned Single Judge and to remit it back to the learned Single Judge in order to give an opportunity to the appellant to address the learned Single Judge on the issue of jurisdiction and in respect of all other issues. In fact, the Scheme of the Civil Procedure Code and more particularly Order XIV provides that piecemeal trial of the issues shall be avoided and all issues shall be decided by the Court. Such procedure is not adopted probably because of the absence of the present appellant before the Court. But we find it appropriate that it will be in the interest of both the parties to remit back the matter to the learned Single Judge with further request to the learned Single Judge to consider the matter on all issues and, therefore, we do not desire to enter into at this stage to decide the question of jurisdiction which is already decided by the learned

Single Judge on merits. We are setting aside the finding only on the ground that it was an exparte order and since no opportunity of being heard was given to the appellant. We make it clear that the point is kept open for both the parties to address, apart from other points involved in the case. Since the matter is old one, the original plaintiff-appellant is of 73 years of age and he desires to have the possession after he has surrendered the possession provided to him by the Government when he was in service, we find it equally appropriate to request the learned Single Judge to give precedence to this matter and with the consent of both the learned counsel appearing for the parties we fix a date of appearance before the learned Single Judge on 4.4.2005 and thereafter the parties will get a suitable date from the learned Single Judge. In view of this, the Letters Patent Appeal is allowed. The order passed by the learned Single Judge dated 30.1.2002 in First Appeal No.144 of 1999 is hereby set aside with a clarification that the point of jurisdiction is kept open to be argued before the learned Single Judge. The matter is remitted back to the learned Single Judge for disposal in accordance with law on merits. We further request the learned Single Judge to consider all points involved and the

issues in the matter and dispose of the matter as early as possible. We direct the parties to appear before the Single Judge on 4.4.2005.

3. It is needless to express that the Appeal is restored to original position including the interim orders therein.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

/rrt/db-05/lpa210-02

HIGH COURT
CIVILI APPELLATE SIDE

LETTERS PATENT APPEAL NO.210 OF 2002
IN
FIRST APPEAL NO.144 OF 1999

Date of Judgment:

March 23, 2005

For approval and signature

THE HON'BLE MR.JUSTICE S.B.MHASE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?